Working Toward 1999

Government of the Northwest Territories

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Table of Contents

	Page
Summary of GNWT Position	**1**
Basic Principles	1
Legislative Assembly Issues	2
Model of Government Organization	2
Boards and Agencies	3
Interim Commissioner of Nunavut	3
Staffing Two Governments	3
Human Resources Development & Training	4
Nunavut Infrastructure	4
Division of Assets and Liabilities	4
Incremental Costs of Division	4
Post-Division Funding Arrangements	5
Constitutional Issues	5
Introduction	**6**
Basic Principles	**7**
Recommendations	10
Legislative Assembly Issues	**11**
Recommendations	12
Model of Government Organization	**14**
Recommendations	16
Boards and Agencies	**18**
Recommendations	18

	Page
Interim Commissioner of Nunavut	**19**
Recommendations	20
Staffing Two Governments	**22**
Recommendations	23
Human Resources Development & Training	**25**
Recommendations	26
Nunavut Infrastructure	**28**
Recommendations	29
Division of Assets and Liabilities	**30**
Recommendations	31
Incremental Costs of Division	**32**
Post-Division Funding Arrangements	**34**
Recommendations	35
Constitutional Issues	**36**
Appendices	

Table of Appendices

Appendix A: NIC and NTI Recommendations

Appendix B: Calendar of Activities

SUMMARY OF
GNWT POSITION

Basic Principles

- That planning for division proceed in a manner consistent with the Nunavut Land Claims Agreement, in particular with Article 4 of that Agreement.

- That planning for division proceed in a manner consistent with the Nunavut Political Accord.

- That the "honour of the Crown" requires the federal government to meet its obligations pursuant to the Nunavut Land Claims Agreement and the Nunavut Political Accord, in spirit and intent.

- That Nunavut Tunngavik Inc. be accorded a role in the process for the establishment of Nunavut consistent with its role as signatory to the Nunavut Land Claims Agreement and the Nunavut Political Accord.

- That the federal government provide reasonable incremental funding for division consistent with its responsibilities pursuant to the Nunavut Land Claims Agreement and the Nunavut Political Accord.

- That the level of programs and services provided to residents of the NWT not be diminished as a result of division.

- That the Nunavut government will be a public government in which all residents share the same fundamental democratic rights.

- That the Government of the Northwest Territories, as a democratically elected responsible government, has the political responsibility to represent the interests of all residents of Nunavut and of the western NWT up to April 1, 1999 and in particular to represent such interests to other levels of government in Canada.

- That planning for Nunavut preserve the maximum flexibility for the future Nunavut government.

- That the devolution of provincial-type powers and responsibilities from the federal government to the GNWT continue without interruption during the division process.

- That the constitutional status and equality of the territorial governments be maintained and enhanced during and following the division process.

- That the establishment of Nunavut be recognized as a foremost example of the flexibility of the Canadian federal system and in particular of its capacity to accommodate cultural diversity and to meet the aspirations of an Aboriginal people through the institutions of public government.

Legislative Assembly Issues

- That issues regarding the size of the Nunavut Legislative Assembly, dual member constituencies, separate representation of women and men, and the election of the Premier at large, be resolved in sufficient time to allow the appointment of an electoral districts boundaries commission, if required for Nunavut, by fall 1996.

- That issues relating to the size of the western NWT Legislative Assembly be resolved in sufficient time to allow for the appointment of an electoral districts boundaries commission to revise the western NWT electoral districts, by fall 1996.

- That the costs of the electoral districts boundaries commission, both for Nunavut and the western NWT, be fully reimbursed by the federal government as transitional costs of division.

- That the electoral boundaries for Nunavut and the western NWT be determined and approved by March 1998 in order to allow for preparations for the first elections for the two territories.

- That the first Clerk of the Nunavut Legislative Assembly be retained by the Office of the Interim Commissioner of Nunavut, no later than one year prior to the convening of the first Nunavut Legislative Assembly.

Model of Government Organization

- That the Nunavut government be decentralized, subject to adequate ongoing incremental and base federal funding.

- That the headquarters of the Nunavut government not be located in the same community as regional offices.

- That the Nunavut government be sufficiently resourced on start-up to meet its jurisdictional obligations in full and consistent with section 8.5 of the Nunavut Political Accord.

- That all issues associated with the resident courts for Nunavut be addressed well in advance of April 1, 1999 either by relocating sufficient level of judicial and other related resources to the Nunavut region or by otherwise making provision for such resources.

- That the incremental resources necessary to accomplish this objective must be made available.

- That sufficient prosecutorial resources to meet the representative needs of Nunavut be transferred to the Nunavut government and that the responsibility for the prosecution function should then be transferred to the Attorney General of Nunavut from the Attorney General of Canada or, if applicable, from the Attorney General of the Northwest Territories.

Boards and Agencies

- No steps will be taken to abolish or amalgamate regional boards without careful consideration of the overall advantages and disadvantages as well as appropriate consultation.

Interim Commissioner of Nunavut

- That an Interim Commissioner of Nunavut be appointed by the fall of 1996.
- That the office of the Interim Commissioner be regarded as primarily managerial and administrative in nature.
- That the Coordinating Committee of Officials on Nunavut (appointed from among the parties to the Nunavut Political Accord) recommend an appropriate candidate to their principals, draft ministerial instructions for the Interim Commissioner and maintain continuing liaison with the Interim Commissioner, between the parties and with NIC.
- That terms of reference and draft instructions for the Interim Commissioner be consistent with the recognition of the GNWT as the democratically elected and responsible government for the whole of the NWT until April 1, 1999 and that political decisions continue to be made by elected representatives.

Staffing Two Governments

- That all regional staff in Nunavut be transferred to the Nunavut government on April 1, 1999.
- That arrangements be made for the equitable allocation of the GNWT headquarters staff between the two post-division territorial governments.
- That staffing transfer arrangements ensure the grandfathering of existing benefits, leave credits, etc. of individuals from the present GNWT to the Nunavut government.
- That the federal government ensure that sufficient incremental funding is made available to cover the costs of staffing actions associated with division, including relocation expenses, severance costs, hiring expenses and copying and duplication of systems and records.

Human Resources Development and Training

- That 50% Inuit employment in the Nunavut public service, including at the senior management level, be attained by 1999-2000.
- That representative Inuit employment within the Nunavut public service be attained by 2008-9.
- That federal and territorial human resources development and training plans, consistent with the attainment of these objectives, be implemented.

- That GNWT coordinate the development and implementation of human resources development and training initiatives for the Nunavut public services through to 1999.

- That sufficient incremental funding be provided by the federal government to meet the objectives of 50% Inuit employment by 1999-2000 and representative Inuit employment by 2008-9.

Nunavut Infrastructure

- That GNWT assume the responsibility for the construction of additional infrastructure required for Nunavut leading to April 1, 1999.

- That on April 1, 1999, responsibility for the construction of additional Nunavut infrastructure be assumed by the Nunavut government.

- That the BIP, as may be modified from time to time, apply to this infrastructure in the period leading to April 1, 1999.

Division of Assets and Liabilities

- The distribution of assets and liabilities, to the extent possible, must be done in a manner which will ensure and maintain the financial and program stability of each new government.

- The federal government must provide for identified shortfalls in assets.

Incremental Costs of Division

- That discussions continue between the GNWT and DIAND on requirements for transitional incremental costs of division.

- That, by December 1996, Canada and GNWT sign a Memorandum of Understanding to cover GNWT transitional incremental costs of division for the period ending on March 31, 1999.

Post-Division Funding Arrangements

- That formula funding arrangements be established for the governments of Nunavut and the western territory and that such arrangements or ancillary agreements provide fully for the incremental costs associated with the establishment and operation of two territorial governments.

- That discussions of the financial requirements of the two territories commence by September 1996 and be concluded no later than March 31, 1997.

Constitutional Issues

- That the Canadian Charter of Rights and Freedoms be amended to refer explicitly to Nunavut and the western territory.

- That the Constitution Act (No. 2), 1975 be amended or that Parliament otherwise act to provide for separate representation in the Senate of Canada for Nunavut and the western territory.

- That s.51 (2) of the Constitution Act, 1867 be amended in recognition of the right of Nunavut and the western territory to separate representation in the House of Commons.

INTRODUCTION

In June 1993, the Parliament of Canada enacted the Nunavut Act. Passed to honour federal commitments given in Article 4 of the Nunavut Land Claims Agreement and the Nunavut Political Accord, the effect of this Act, when it comes into full force on April 1, 1999 will be to create two jurisdictions from the present Northwest Territories. Important among the provisions of the Nunavut Act and the Nunavut Political Accord are those providing for the establishment of the Nunavut Implementation Commission (NIC). This is an advisory body to the Government of the NWT (GNWT), the Government of Canada and Nunavut Tunngavik Inc. (NTI).

The NIC's first comprehensive report on the establishment of Nunavut, Footprints in New Snow, was released on May 24, 1995. Initial discussion of the report occurred at a June meeting in Yellowknife between Nunavut Caucus, the NTI and the NIC Commissioners. Many of the recommendations in the report were further discussed at a meeting involving the Premier, the DIAND Minister, the President of NTI and the NIC in Rankin Inlet on September 29, 1995. In addition, there have been discussions between federal, GNWT and NTI officials and NIC has undertaken further research in some of the areas dealt with in the report.

While there has been discussion of the NIC report with the NIC and between the parties to the Nunavut Political Accord, the GNWT has not issued a public response to Footprints in New Snow. This statement is intended to meet this need.

Footprints in New Snow is an important contribution to identifying the approach required for the establishment of Nunavut. It is both well written and comprehensive. Much of the content reflects the results of consultation within Nunavut as well as discussions at Nunavut Leaders' Meetings and the sharing of information and advice between officials and staff of the NIC, NTI and the two governments. Over all there is a great deal in common between the approach that the NIC recommends to the creation of Nunavut and the approach of the GNWT. The GNWT agrees with the general thrust of the NIC's recommendations; however, there are some areas in which the approach of the GNWT differs from that of the NIC. But even in those cases where there is not complete agreement, there is often agreement on the general approach. In all cases the report of the NIC has stimulated reflection and discussion in these critical areas.

The following analysis does not assess and respond to each detailed recommendation of the NIC. Such an approach could obscure the broad agreement between the approach the NIC recommends and that of the GNWT. Thus, those NIC recommendations with which the GNWT is in substantial agreement are listed at the end of each section and major issues involving a different approach are discussed in the text. Additional positions of the GNWT are also listed.

This analysis has also benefited from the response to the NIC report prepared by NTI. In reviewing the NTI response, it is apparent that there is broad agreement between the approaches of GNWT, NTI and NIC. Specific NTI recommendations in which the GNWT substantially concurs are also listed in each section of this response, unless essentially covered by NIC recommendations or by a specific GNWT position. For a listing (by number) of those NIC and NTI recommendations with which the GNWT substantially agrees see Appendix "A".

BASIC PRINCIPLES

The possibility of dividing the Northwest Territories into distinct eastern and western territories has been considered at various times since the 1950s. However, the present impetus to establish Nunavut dates from a proposal put forward by the Inuit Tapirisat of Canada in 1976, as part of its land claims settlement proposal. The proposal was to divide the NWT to establish a territory to the north and east of the treeline. In this territory, all citizens would enjoy the same fundamental democratic rights, but Inuit values and aspirations would be better reflected due to the geographic and demographic realignment.

In the seventeen years that it took to settle the claim and secure passage of the Nunavut Act by Parliament, the Inuit of the NWT never wavered in their insistence that their political development aspirations were integral to the new relationship they were seeking to establish with Canada based on their Aboriginal title. However, the federal government would not agree to negotiate the establishment of a new territory with a pubic government through a claims settlement agreement.

A compromise was reached with the inclusion of Article 4 in the Nunavut Land Claims Agreement. In this Article, the Government of Canada undertook to recommend legislation to Parliament to establish a new territory and government of Nunavut, and to negotiate a Political Accord with the Tungavik Federation of Nunavut (TFN) and the GNWT on how this would be accomplished.

Provisions in Article 4 make it clear that the establishment of Nunavut is integrally linked to the claim settlement. When the Inuit voted to ratify the settlement agreement they did so on the understanding that the establishment of Nunavut, in accordance with the terms of the Nunavut Political Accord, was part of the settlement package. Implementation of Article 4 and of the Political Accord is thus an obligation that the Government of Canada, through its fiduciary relationship to the Inuit as an Aboriginal people, has undertaken to fulfil in spirit and intent.

Important consequences flow from this. Although Nunavut is to be a public government, NTI as a party to the Nunavut Political Accord, has a right to be consulted on the implementation of the terms and conditions of the Political Accord. It is also clear from the Political Accord that the establishment of Nunavut was not be undertaken at the expense of the existing programs and services provided to the residents of the NWT. The Political Accord provides that Canada "shall determine and fund reasonable incremental costs arising from the creation and operation of the Government of Nunavut", and further that financial arrangements for the two future territorial governments:

> "...shall support the need for financial stability for the territories and provide both territorial governments the opportunity to continue to provide public services for residents, recognizing the existing scope and quality of such services."

The criteria of reasonableness, plain meaning and the honour of the Crown provide the context for judgement as to whether or not these obligations are fulfilled.

While the link between Nunavut and the claims settlement is fundamental, Nunavut, as a public government, is also the result of a long process of consensus building within the whole of the NWT and its governmental institutions. Thus the principle of division was endorsed in a territory-wide plebiscite in 1982 and the boundary for division in a further plebiscite ten years later. The Legislative Assembly and GNWT have consistently supported the establishment of two new territories and further supported the inclusion of provisions within the land claims agreement in support of that objective.

The establishment of two new territories is part of a broad process whereby the people of the north have gradually moulded the government and institutions of the Territories to better meet their aspirations. The democratization of the north is a relatively recent event. It is only since 1975 that the Assembly of the NWT has been fully elected, and only since 1986 that the conventions of responsible government have been fully observed. Through this process a government directly accountable to the people of the north has been put in place with the responsibility to represent and advance the interests of all territorial residents. This responsibility will continue to be vested in the GNWT until April 1, 1999, at which time it will pass to the two successor governments. It is important that this democratic accountability be preserved throughout the division process and be continued with the successor territories.

It is important for the governments of Nunavut and the western NWT be able to build on these achievements. In this regard, the process of devolution of provincial-type powers and responsibilities that has been continuing over the past twenty-five years, should continue. The administration and control of public lands and sub-surface resources is one of the key remaining areas of provincial type jurisdiction where the federal government continues to exercise jurisdiction in the north. This is an area of critical importance for the control of the development and growth of the northern economy, and the GNWT will continue to seek an energy and minerals accord with the federal government through the devolution process. Of course, this accord must respect existing Aboriginal and treaty rights, including ratified land claims agreements.

Closely related to this concern is the need to ensure that Canada's three territories receive equal constitutional recognition. Both Nunavut and the western NWT need recognition of their right of separate representation in the Senate and House of Commons and all territories must continue to participate in intergovernmental and constitutional conferences.

In the national constitutional context, the creation of Nunavut is a beacon marking the flexibility of the confederation. The decision to proceed with Nunavut, when taken in 1993, was an act of imagination that caught the attention of the world. A bold step was being taken to realign the political boundaries of Canada, to adjust our political institutions to the reality of a distinct society, to accommodate the political aspirations of an Aboriginal people through institutions of public government. As Canada continues to forge and maintain a constitutional consensus, we must recognise the great accomplishment that the establishment of Nunavut represents. Yet this accomplishment will ring hollow if secured at the cost of programs and services provided to the citizens of the North. Problems of social and economic development require adequate financial resources for resolution and the creation of Nunavut must contribute to this resolution, not detract from it.

GNWT Position

- That planning for division proceed in a manner consistent with the Nunavut Land Claims Agreement, in particular with Article 4 of that Agreement.

- That planning for division proceed in a manner consistent with the Nunavut Political Accord.

- That the "honour of the Crown" requires Canada to meet its obligations pursuant to the Nunavut Land Claims Agreement and the Nunavut Political Accord, in spirit and intent.

- That Nunavut Tunngavik Inc. be accorded a role in the process for the establishment of Nunavut consistent with its role as signatory to the Nunavut Land Claims Agreement and the Nunavut Political Accord.

- That the federal government provide reasonable incremental funding for division consistent with its responsibilities pursuant to the Nunavut Land Claims Agreement and the Nunavut Political Accord.

- That the level of programs and services provided to residents of the NWT not be diminished through the division process.

- That the Nunavut Government will be a public government in which all residents will share the same fundamental democratic rights.

- That the Government of the Northwest Territories, as a democratically elected responsible government, has the political responsibility to represent the interests of all residents of Nunavut and of the western NWT up to April 1, 1999 and in particular to represent such interests to other levels of government in Canada.

- That planning for Nunavut preserve the maximum flexibility for the future Nunavut government.

- That the devolution of provincial-type powers and responsibilities from the federal government to the GNWT continue without interruption during the division process.

- That the constitutional status and equality of the territorial governments be maintained and enhanced during and following the division process.

- That the establishment of Nunavut be recognized as a foremost example of the flexibility of the Canadian federal system and in particular of its capacity to accommodate cultural diversity and to meet the aspirations of an Aboriginal people through the institutions of public government.

NTI Recommendations

The GNWT substantially agrees with the following NTI recommendation:

- 2-10: That continued devolution of federal government responsibilities proceed in a manner consistent with Inuit aboriginal and treaty rights. In particular, that a Northern Energy and Minerals Accord be concluded which provides a role for the Government of Nunavut in respect to oil, gas and minerals in Nunavut no less favourable than that provided to the GNWT. In addition, that NTI be given assurances by the Government of Canada and NTI will be intimately involved in any other discussions regarding devolution of Federal Government responsibilities to the GNWT prior to 1999.

LEGISLATIVE ASSEMBLY ISSUES

The powers of the Nunavut Legislative Assembly are provided for in the Nunavut Act. They are substantially the same as those of the present NWT Legislative Assembly.

The Nunavut Act provides that there shall be no fewer than 10 Members of the Nunavut Legislative Assembly. Currently there are 10 Nunavut Members in the NWT Legislative Assembly and if this number were sufficient to constitute a Nunavut Legislative Assembly, the present NWT electoral district boundaries within Nunavut could simply be adopted as the boundaries for the Nunavut Assembly. As the NIC Report points out, it is important that the Legislative Assembly be large enough to represent the diversity of Nunavut interests and opinions. In addition, 10 MLAs may not be a sufficient pool from which to select a Cabinet and Speaker, while retaining a majority of ordinary Members. For these reasons, the NIC has recommended a Nunavut Legislative Assembly of 16-24 Members, while NTI has suggested a minimum of 18.

If the Nunavut MLAs are to be elected on the same basis as Members of the NWT Legislative Assembly, then new electoral districts need to be established. The standard Canadian practice is to appoint an electoral districts boundaries commission. The GNWT agrees with the NIC in noting that such a commission, if required, would be a transitional cost of division to be covered by the federal government. As a result of division, the western NWT electoral districts will also likely require revision. The NWT Act requires a minimum of 15 MLAs in the NWT Legislative Assembly. On April 1, 1999 the 10 Nunavut MLAs will no longer be entitled to sit in the NWT Assembly, which will thus comprise only 14 members, one short of the minimum size.

The GNWT agrees with the NIC that a Nunavut Legislative Assembly of 16 - 24 members would be appropriate. Determination of the exact number requires the resolution of other proposals relating to the election of MLAs that the NIC has put forward including dual member constituencies, guaranteed representation of men and women, and the direct election of the Premier. The NIC is presently conducting research and consultation on these options and the GNWT will be in a position to comment further once this additional research is received and reviewed. However, such options would appear to require amendments to the Nunavut Act and the desirability of pursuing legislative amendment requires serious consideration. There is also a need to decide these matters in sufficient time to allow for an electoral districts boundaries commission to commence operations. The Chief Electoral Officer for Canada has advised that up to two years may be required for the establishment of new electoral boundaries, including a legal waiting period of six months before such boundaries come into force. The "Countdown" prepared by the Chief Electoral Officer and reproduced as Appendix "B", suggests that the boundaries commission process should begin by the fall of this year.

For the first Nunavut election, NIC has recommended that the writs be issued as early as possible following the coming into force of the operative provisions of the Nunavut Act. The GNWT agrees. Upon the coming into force of the Nunavut Act there will be no functioning Nunavut Legislative Assembly or Nunavut Cabinet. The first Assembly will not be able to convene before mid-June, 1999 and it is essential that the conventions of responsible government be put in place immediately at that time.

At an operational level, the NIC recognizes the need to recruit a Clerk for the Nunavut Legislative Assembly at least six months before the first sitting of the Assembly. The GNWT agrees but considers that at least a year is required. The GNWT further agrees that the Clerk will need to develop draft rules for the Assembly but does not see the Clerk playing a central role in the drafting of legislation for the future government of Nunavut.

GNWT Position

- That issues regarding the size of the Nunavut Legislative Assembly, dual member constituencies, separate representation of women and men, and the election of the Premier at large, be resolved in sufficient time to allow the appointment of an electoral districts boundaries commission, if required for Nunavut, by fall 1996.

- That issues relating to the size and composition of the western NWT Legislative Assembly be resolved in sufficient time to allow for the appointment of an electoral districts boundaries commission to revise the western NWT electoral districts, by fall 1996.

- That the costs of the electoral districts boundaries commission, both for Nunavut and the western NWT, be fully reimbursed by the federal government as transitional costs of division.

- That the electoral boundaries for Nunavut and the western NWT be determined and approved by April 1998 in order to allow for preparations for the first elections for the two territories.

- That the first Clerk of the Nunavut Legislative Assembly be retained by the Office of the Interim Commissioner of Nunavut, no later than one year prior to the convening of the first Nunavut Legislative Assembly.

NIC Recommendations

The GNWT substantially agrees with the following NIC recommendations:

- 4-1: The NIC recommends that the first Nunavut Legislative Assembly have no fewer than 16 members and no more than 24 members.

- 4-3: The NIC recommends that it should actively pursue, through a program of research and public consultation, issues associated with:

  1. the precise size of the first Nunavut Legislative Assembly;
  2. two-member constituencies;
  3. guarantees of male and female representation on the Assembly; and
  4. the direct election of the Nunavut Government Leader.

- 4-5: The NIC recommends that the writ for the election of the first Nunavut Legislative Assembly be issued at the earliest possible date following the coming into force of the Nunavut Act (April 1, 1999), the election be held on the earliest possible date (middle of May, 1999), and the Assembly be convened at the earliest possible date (middle of June, 1999).

- 4-6: The NIC recommends that the cost of organizing and conducting the election of the first Nunavut Legislative Assembly be identified as a transitional cost of the setting up of the Nunavut Territory and Government and be borne by the Government of Canada. The cost of an electoral boundaries commission to determine the electoral boundaries of the Nunavut Legislative Assembly prior to 1999 should, in the event that a commission is needed, also be considered a transitional cost and be borne by the Government of Canada.

NTI Recommendations

The GNWT substantially agrees with the following NTI recommendations:

- 1-2: That the precise size of the first Nunavut Legislative Assembly, the issues of two-member constituencies, gender equality and the direct election of the Nunavut Government Leader be determined following further research and consultation on this matter by the NIC.

- 1-4: That two electoral boundaries Commissions be established, one for Nunavut and one for the western NWT, as agreed in Rankin Inlet. The Electoral Boundaries Commission for Nunavut should begin work on defining the electoral boundaries of Nunavut as soon as possible.

MODEL OF GOVERNMENT ORGANIZATION

An important component in establishing Nunavut involves the determination of a suitable model of government organization. Among other purposes, a model of government organization is required for the determination of additional infrastructure requirements and for costing purposes.

Various estimates have been made regarding the personnel requirements, additional to the existing territorial government regional staff in Nunavut, as a result of division. In 1991, Coopers and Lybrand estimated the headquarters Full Time Equivalent (FTE) requirements for Nunavut at 1180; in a 1992 study, using different assumptions, the same firm reduced this estimate to 930. Price Waterhouse, reviewing Coopers and Lybrand's work, determined Nunavut headquarters requirements as 849. NIC has further reduced this estimate to 600, of which 45 would be incremental regional positions.

The 600 FTE identification is significantly lower than earlier estimates and is not fully explained in the text. The GNWT is reviewing the adequacy of this estimate against the requirement for the new government to be able to provide services of comparable quality to those currently provided, with proper accountability.

The NIC has recommended a total of 10 departments. These are similar to the departmental organization of the present GNWT, but with some differences such as the establishment of separate departments of "Culture, Language, Elders and Youth" and "Human Resources", the merging of Housing, MACA and Transportation and the merging of Renewable Resources with Economic Development and Tourism and Energy, Mines and Petroleum Resources to establish a Department of Sustainable Development.

The latter amalgamation is being carried out by the GNWT. Further consolidation of departments is possible. In 1994, the GNWT made a significant change in its budgetary process, to group government departments into one of three envelopes (Social, Infrastructure and Resource Development) according to main function or activity. The GNWT is thus rationalizing its structure and will continue to change as new challenges arise, including fiscal pressures and community, Aboriginal and regional initiatives, in the period between now and 1999.

Another important question raised by the NIC report is the decentralization of the Nunavut Government. The NIC report recommends that the Baffin regional office be moved outside of Iqaluit. The GNWT agrees and endorses the goal of distributing the economic and employment benefits of government responsibilities throughout Nunavut. However, the financial requirements and implications of decentralization must be fully understood. Without adequate funding, decentralization cannot occur.

The issue of phasing in program delivery responsibilities by the Nunavut government is another important issue. When the Nunavut Political Accord was signed, a phase-in over 10 years was contemplated. The NIC, in contrast, recommends that the Nunavut government be fully functioning by the end of the 1999 - 2000 year. The GNWT endorses the objective of a short transition period, but is extremely concerned that insufficient resources in the first year may make this objective unattainable.

One other area of concern which requires urgent attention is the administration of justice in the Nunavut region in the period subsequent to division. While the NIC report addressed the requirements of establishing a Department of Justice for Nunavut it did not adequately consider what action would be necessary to ensure that Nunavut will have the benefit of a resident judiciary and an Attorney General appointed by the government of Nunavut.

At the present time there are no resident judges of the Supreme Court of the Northwest Territories in the Nunavut region and there is only one resident judge of the Territorial Court. The GNWT takes the position that it will be essential to have all issues associated with the resident courts for Nunavut be addressed well in advance of April 1, 1999 either by relocating sufficient level of judicial and other related resources to the Nunavut region or by otherwise making provision for such resources. Furthermore, the GNWT takes the position that the incremental resources necessary to accomplish this objective must be made available.

With respect to the Attorney General issue the GNWT takes the position that sufficient prosecutorial resources to meet the representative needs of Nunavut must be transferred to the Nunavut government and that the responsibility for the prosecution function should then be transferred to the Attorney General of Nunavut from the Attorney General of Canada or, if applicable, from the Attorney General of the Northwest Territories.

GNWT Position

- That the Nunavut government be decentralized, subject to adequate ongoing incremental and base federal funding.
- That the headquarters of the Nunavut government not be located in the same community as regional offices.
- That the Nunavut government be sufficiently resourced on start-up to meet its jurisdictional obligations in full and consistent with section 8.5 of the Nunavut Political Accord.
- That all issues associated with the resident courts for Nunavut be addressed well in advance of April 1, 1999 either by relocating sufficient level of judicial and other related resources to the Nunavut region or by otherwise making provision for such resources.
- That the incremental resources necessary to accomplish this objective must be made available.
- That sufficient prosecutorial resources to meet the representative needs of Nunavut be transferred to the Nunavut government and that the responsibility for the prosecution function should then be transferred to the Attorney General of Nunavut from the Attorney General of Canada or, if applicable, from the Attorney General of the Northwest Territories.

NIC Recommendations

The GNWT substantially agrees with the following NIC recommendations:

- 5-2: The NIC recommends that political responsibilities within Nunavut be concentrated at the territorial and community levels, with no new law making bodies being introduced at the regional level.

- 5-6: The NIC recommends that investigations be conducted into the possibility of the Nunavut Government, the Government of Canada, and the new institutions of public government created by the Nunavut Agreement achieving cost efficiencies in relation to

  1. wildlife research;
  2. monitoring and enforcement of decisions/orders/certificates of government institutions and departments in relation to the use of lands, waters and resources, including wildlife;
  3. simplicity/predictability of environmental assessment procedures; and
  4. administrative support for the new institutions of public government.

- 5-7: The NIC recommends that NTI be fully involved in any investigations into the issues referred to in Recommendation #5-6 and that the complete financial dimensions of the issues be frankly acknowledged and discussed.

- 5-8: The NIC urges the parties to the Nunavut Agreement, in consultation, where they have already been established, with the institutions themselves, to decide on the permanent location of the headquarters of the new institutions of public government based on the following factors: (1) the need for the institutions to be reasonably proximate to the headquarters of the various territorial government departments that deal with related issues; and (2) the desirability of distributing job opportunities across various regions and communities. The NIC further urges that, in order to facilitate broader planning efforts and to identify possibilities for maximizing cost efficiencies, decisions as to location be made as soon as possible.

- 5-11: The NIC recommends that the issue of "phasing" the build-up in the administrative capacity of the Nunavut Government be recognized as an issue touching on current events, not just events occurring on and after April 1, 1999.

- 5-12: The NIC recommends that the GNWT complete a comprehensive plan to re-organize itself in preparation for division. The re-organization plan should, to the extent possible, calculate the degree to which positions within the GNWT can be dedicated, entirely or in quantifiable part, to activities within the Nunavut area. The plan should identify those positions that should be re-defined or created within the existing GNWT to assist in the creation of Nunavut; for example, the plan should examine the need to create an assistant deputy minister in relation to preparing human resources for the Nunavut Government. The plan should identify appropriate recruitment and training strategies needed for its implementation. The plan should be completed, at least in preliminary form, and the various implementation measures contemplated in the plan costed out, in time to feed into the federal Cabinet consideration of Nunavut issues that is recommended by NIC for the fall of 1995.

NTI Recommendations

The GNWT substantially agrees with the following NTI recommendations:

2-4: That there be only two levels of government in Nunavut - community and territorial, as agreed in Rankin Inlet.

- 2-6: That the continued devolution to community governments in Nunavut be supported, provided it is cost effective, does not impair the coherence of the Nunavut Government, is consistent with Inuit rights under the Nunavut Land Claims Agreement and fully involves municipal councils in the devolution process.

  2-7: That NIC recommendations #5-6 to #5-8 be adopted with the provision that the Institutions of Public Government established under the Nunavut Land Claims Agreement not be dependent upon the Nunavut Government for administrative support.

BOARDS AND AGENCIES

The NIC Report gives some attention to the role of boards and agencies within the administrative structure of government. Concerns are raised as to the "proliferation" of such bodies, their accountability, their effectiveness, their funding requirements, and whether or not such bodies are really needed within a smaller and more homogenous jurisdiction, as Nunavut will be. The Report indicates that a review of the role of boards and agencies within the future Nunavut Government will be included in the next comprehensive report of the NIC. Notwithstanding this, the Report recommends the abolition of all health boards and the consolidation of the existing education boards into a single board.

This approach needs careful consideration. In particular, the suggestion that the three Nunavut Boards of Education should be amalgamated into a single board has been questioned. The existing Divisional Boards evolved to replace a structure that was considered too centralized, but the effect of the NIC's recommendations have been viewed as reversing this process. It has also been argued that the cost savings from establishing a single Nunavut Board of Education would be relatively small and would be at the expense of ensuring greater regional representation.

GNWT Position

- No steps will be taken to abolish or amalgamate regional boards without careful consideration of the overall advantages and disadvantages as well as appropriate consultation.

NIC Recommendations

The GNWT substantially agrees with the following NIC recommendation:

- 5-3: The NIC recommends that all special purpose boards, agencies, councils and similar bodies that are now operating in Nunavut that are funded, directly or indirectly by the GNWT, should be reviewed as to whether or not they are a necessary part of a smoothly functioning public administration in Nunavut. Only those bodies performing important tasks with acceptable levels of efficiency should be preserved.

INTERIM COMMISSIONER OF NUNAVUT

The NIC report explains some of the reasoning underlying Part IV of the Nunavut Act, which provides for the office of the Interim Commissioner. The Interim Commissioner is to ensure that the many practical steps needed to establish a functioning Nunavut government by April 1, 1999 are taken and is intended to create a legal entity able to enter into certain agreements that would bind the future Nunavut Government. The NIC recommends that the federal government use its discretionary power pursuant to Part IV of the Nunavut Act to appoint an Interim Commissioner to coincide with the beginning of the 1997-98 fiscal year. The GNWT agrees on the need for an appointment by the fall of 1996.

At the September 29, 1995 Rankin Inlet meeting, the parties to the Nunavut Political Accord further discussed a number of the critical issues associated with the appointment of an Interim Commissioner. It was agreed that this position is administrative or managerial - it is not a political or symbolic post - and the person appointed to it must have the technical abilities and experience required to discharge the duties associated with this office. It was also agreed that a committee of senior officials from the federal and territorial governments and an NTI representative be established. This Committee would review possible candidates for appointment, develop proposed formal instructions for the Interim Commissioner and maintain continuing liaison between the parties and the Interim Commissioner. These understandings were confirmed in a meeting between Premier Morin and Minister Irwin on January 4, 1996 and are being implemented through the Coordinating Committee of Officials on Nunavut (CCON).

In approaching the office of the Interim Commissioner, there are three major concerns to the GNWT:

1. The GNWT remains the democratically elected government with responsibility for Nunavut and the western NWT until April 1, 1999; as such it has the duty to represent the interests of all its residents and to attempt to reconcile these in cases where there may be divergence; the Interim Commissioner, an appointed official, cannot infringe this responsibility.

2. Although the Interim Commissioner is legally appointed by the federal government (Governor-in-Council), the responsibilities of the Interim Commissioner are to organize a functioning Nunavut administration. The Interim Commissioner's responsibilities can be effectively discharged only by working closely with the GNWT - the transitional steps taken by the Interim Commissioner and the GNWT must mesh.

In connection with these concerns, the GNWT looks to the Coordinating Committee of Officials on Nunavut to select appropriate appointees, to establish acceptable terms of reference and to determine the framework of the working relationship between the Interim Commissioner and the parties to the Nunavut Political Accord.

It is important that the mandate of the office of the Interim Commissioner be kept distinct from that of the NIC. The NIC is a statutory body separate from government that has the responsibility of advising the parties to the Nunavut Political Accord. The Interim Commissioner, in contrast, is charged with taking the operational steps needed to establish an functioning Nunavut government within an overall policy framework that government has determined.

The GNWT would emphasizes the importance of the Interim Commissioner's practical responsibilities under section 72 of the Nunavut Act. In addition, under section 73 of the Act, it will be important to ensure that the Interim Commissioner has an opportunity for full input into intergovernmental negotiations.

GNWT Position

- That an Interim Commissioner of Nunavut be appointed by the fall of 1996.
- That the office of the Interim Commissioner be regarded as primarily managerial and administrative in nature.
- That the Coordinating Committee of Officials on Nunavut (appointed from among the parties to the Nunavut Political Accord) recommend an appropriate candidate to their principals, and draft ministerial instructions for the Interim Commissioner and to maintain continuing liaison with the Interim Commissioner, between the parties and with NIC.
- That terms of reference and draft instructions for the Interim Commissioner be consistent with the recognition of the GNWT as the democratically elected and responsible government for the whole of the NWT until April 1, 1999 and that political decisions continue to be made by elected representatives.

NIC Recommendations

The GNWT substantially agrees with the following NIC recommendations:

- 12-1: The NIC recommends that the Governor in Council use the discretion set out in Part IV of the Nunavut Act to appoint an Interim Commissioner of Nunavut prior to April 1, 1999.
- 12-6: The NIC recommends that the Office of the Interim Commissioner be located in the community chosen as capital of Nunavut. The Commissioner should have an adequate budget and staff , and the Office of the Commissioner should have a staff presence in Yellowknife and Ottawa. Further work should be undertaken by the NIC, resulting in recommendations at an early date, concerning the relationship between the Office of the Interim Commissioner and the NIC in the period following the appointment of the Interim Commissioner.
- 10-9: The NIC recommends that the Interim Commissioner be equipped with resources to maintain an office in Yellowknife.

NTI Recommendations

The GNWT substantially agrees with the following NTI recommendations:

- 6-1: That a tri-partite Government of Canada, GNWT and NTI committee be constituted, as soon as practicable, charged with the following tasks:
  - to recruit and nominate a person or persons as Interim Commissioner of Nunavut; and
  - to draft any written instructions to be supplied to the Interim Commissioner by the Minister of DIAND.
- 6-2: That an Interim Commissioner be appointed from nominations supplied by the tri-partite committee and approved by the parties to the Nunavut Political Accord and that the Interim Commissioner take office as soon as possible, and at any rate, no later than April 1, 1997.
- 6-3: That the written instructions supplied to the Interim Commissioner by the Minister of DIAND include a requirement that the Interim Commissioner exercise powers in consultation with persons designated by NTI, GNWT and the Government of Canada.
- 6-4: That the office of the Interim Commissioner be located in the community in Nunavut chosen as capital with such other offices located outside of Nunavut as the Interim Commissioner may deem necessary.
- 6-5: That the office of the Interim Commissioner be supplied with adequate funding and sufficient flexibility within its annual budget to carry out its responsibilities in a rational manner and time frame.

STAFFING TWO GOVERNMENTS

Although every professional study has concluded that two territorial governments will require a net staff complement greater than that required to operate a single territorial government, division nevertheless poses a number of concerns. These concerns relate to continuity of public service employment in the context of division, but more specifically to:

- continuity of employment of regional staff, both in Nunavut and the western territories;
- recruitment of staff to undertake new headquarters responsibilities in Nunavut; and
- opportunities for GNWT headquarters staff, currently located in the west, to transfer to the Nunavut Government following division.

The NIC Report correctly points out that the task of creating a Nunavut government does not require the creation of an entire public service from top to bottom:

> "the job at hand involves introducing an efficiently organized headquarters level onto a solid body of regional and local administration that already exists in Nunavut...." [Pp. 43-44]

The first task is therefore for appropriate steps be taken for the transfer of the regional and local administration of the GNWT within Nunavut from the GNWT to the Nunavut Government. The second task is to recruit sufficient staff to ensure that essential headquarters positions in Nunavut are filled. The third task is for any GNWT headquarters employees located in the western NWT, affected by a downsizing of the staff following division, to be assured of fair and equitable treatment.

These tasks must be approached with care. Uncertainty as to future job security could lead to the loss of capable staff. This would be deleterious to both future territorial governments and might lead to expensive recruitment costs being incurred for replacements. It is important to note that the 1992 boundary plebiscite assured voters that division would occur in such as way as to "respect the employment status and location preferences of GNWT employees". This understanding underlay the ratification of the division boundary, a critical step in the process toward the creation of two territories.

The personnel transfers that will take place in 1999 from the GNWT to the Nunavut government may logically be governed by the same principles as those applying to federal-territorial devolution agreements. In particular, the federal government's Guidelines for Federal Program Transfers to the Territorial Governments state in part:

> "The federal government shall, as a first priority in every instance, seek guarantees from territorial governments that all federal public servants ... affected by transfer actions will be offered positions with similar levels of compensation by the territorial governments..."

In federal-territorial devolution agreements, all staff are transferred with the program. The same principle must be applied to the staffing of the Nunavut and western NWT governments.

Closely related to this question is that of the incremental costs associated with the establishment of the two territorial governments. Recruitment, relocation and severance costs will be a direct outcome of the division process and will thus be incremental costs that are a federal responsibility.

The NIC report recommends the inclusion of provisions concerning division in collective agreements. The GNWT is examining options to ensure the continuity of employment and a staffing process for the two governments that will be fair to territorial governments and to the employees and that will ensure consultation with collective bargaining units in this process.

In addition the Interim Commissioner has critical responsibilities relating to the staffing and design of the Nunavut government headquarters. A close working relationship will be needed between the GNWT and the Interim Commissioner on these and other matters.

GNWT Position

- That all regional staff in Nunavut be transferred to the Nunavut government on April 1, 1999.

- That arrangements be made for the equitable allocation of the GNWT headquarters staff between the two post-division territorial governments.

- That staffing transfer arrangements ensure the grandfathering of existing benefits, leave credits, etc. of individuals from the present GNWT to the Nunavut government and the western NWT government.

- That the federal government ensure that sufficient incremental funding is made available to cover the costs of staffing actions associated with division, including relocation expenses, severance costs, hiring expenses and copying and duplication of systems and records.

NIC Recommendations

The GNWT is in substantial agreement with the following NIC recommendations:

- 5-13: The NIC recommends that the Interim Commissioner for Nunavut be recognized to play a key role with regards to a number of aspects of phasing, including (1) the offering of employment security to a number of individuals who may be willing to step into senior "Nunavut oriented" GNWT jobs as described in a GNWT re-organization plan, (2) the entering into on behalf of the Nunavut Government with the GNWT of agreements governing the operation of any public sector organizations that are "shared" by the two jurisdictions for at least an initial period following April 1, 1999, and (3) the entering into of any legal agreements that might be required to adapt to circumstances at variance from assumptions as to phasing that were built into a federal Cabinet review for the fall of 1995.

- 6-1: The NIC recommends that previous work experience in Nunavut be given significant weighting in the recruitment of individuals to all new public sector positions associated with the creation of the Nunavut Government.

- 6-6: The NIC recommends that planning with respect to the organization and design of the new Nunavut Government on the one hand, and with respect to government employment in Nunavut on the other, must be seen as bound together. Issues relating to the size and composition of the Nunavut public sector cannot be dealt with in isolation.

HUMAN RESOURCES DEVELOPMENT AND TRAINING

The issue of training and human resources development is one of the most critical to the establishment of Nunavut. Article 9.1 of the Nunavut Political Accord states:

> "The parties recognize the central importance of training in enabling Nunavut residents to access jobs resulting from division of the Northwest Territories, and that investing in people is of greater value than investing in infrastructure."

Closely related to this affirmation are the provisions of Article 23 of the Nunavut Land Claims Agreement which establishes the goal of representative Inuit employment within government (federal, territorial and municipal levels).

The NIC proposes attaining 50% Inuit representation within government in Nunavut by 1999 and the further objective of fully representative Inuit employment (85%) by 2021. The GNWT endorses these objectives and has prepared a human resources development plan geared to achieve 50% representation by 1999 and fully representative Inuit employment by the 2008-9 fiscal year. These goals can, however, only be attained if incremental training moneys are provided. The amount of incremental funding required depends upon the size of the Nunavut Government headquarters staff. Using the NIC figure of 600 incremental government positions in Nunavut, it is estimated to cost an additional amount of approximately $73 million to achieve 50% Inuit employment in the government of Nunavut by 1999 and a further amount of approximately $35 million for representative employment (85%) at all levels by 2008/9.

There is a great deal in common between the GNWT's approach to the training of the Nunavut labour force for public sector employment and that put forward by NTI and NIC. The GNWT looks forward to continuing cooperation with NTI, NIC, and the federal government in further developing and implementing a human resources development strategy and incremental training programs for Nunavut.

GNWT Position

- That 50% Inuit employment in the Nunavut public service, including at the senior management level, be attained by 1999-2000.
- That representative Inuit employment within the Nunavut public service be attained by 2008-9.
- That GNWT and federal human resources development and training plans, consistent with the attainment of these objectives, be implemented.
- That GNWT coordinate the development and implementation of human resources development and training initiatives for the Nunavut public service through to 1999.
- That sufficient incremental funding be provided by the federal government to meet the objectives of 50% Inuit employment by 1999-2000 and representative Inuit employment by 2008-9.

NIC Recommendations

The GNWT substantially agrees with the following NIC recommendations:

- 6-7: The NIC recommends that all planning with respect to government employment in Nunavut be built upon the Constitutionally protected commitments with respect to Inuit participation in government employment set out in Article 23 of the Nunavut Agreement.

- 6-8: The NIC recommends that all planning with respect to government employment in Nunavut proceed from an understanding that implementation of the Nunavut Agreement, and honouring the expectations of the people of Nunavut, require that the new Nunavut Government, at its inception, be at least as representative of the Inuit share of the Nunavut population as is the public sector in Nunavut today (approaching 50% of government employees in Nunavut are Inuit). Accordingly, NIC recommends that all planning proceed from an understanding that, at a minimum, Nunavut government employment as of April, 1999, be 50% Inuit by way of (1) overall composition, and (2) occupation of senior management positions.

- 6-9: The NIC recommends that the Inuit employment plans to be completed initially by all government organizations by July 9, 1996, ensure consistent progress, in five year increments, towards the goal of representative levels of Inuit employment. Such plans should provide for the attainment of representative levels as soon as possible and, in any event, not later than 2021 (i.e. 25 years - a generation - after the completion of the first Inuit employment plans).

- 6-13: The NIC recommends that planning for new employment opportunities in Nunavut encourage the full participation of both men and women.

- 6-14: The NIC recommends that planning for new employment opportunities in Nunavut take into account the private as well as the public sector and accommodate the mobility of workers between sectors.

NTI Recommendations:

The GNWT substantially agrees with the following NTI recommendations:

- 3-3: That a process be developed and reviewed and a firm commitment be made for dates for the completion of Inuit employment plans as required by Article 23 of the Nunavut Land Claims Agreement by July 9, 1996. These plans should provide for the attainment of representative levels by 2008.

- 3-5: That the parties commit themselves to the immediate development and implementation of a comprehensive education and training plan for the Nunavut Government.

- 3-8: That the development and implementation of a comprehensive education and training plan for Nunavut be founded on the following principles:

    1. Achievement of representative levels of Inuit employment in the Nunavut Government requires agreement by all parties on a comprehensive framework encompassing the education and training needs and strategies for all job categories and positions within the Nunavut Government.

    2. It is imperative that education and training initiatives begin immediately as part of a long-term strategy to maximize Inuit employment; target dates of 1999 and 2008 provide interim milestones toward the achievement of the final goal of representative levels of employment for Inuit in the Nunavut Government.

- 3-8: That training institutions in Nunavut provide a greater diversity of training programs to address training needs across all sectors of the Nunavut economy.

NUNAVUT INFRASTRUCTURE

In 1992, the federal Cabinet designated DIAND as the Project Leader for the construction of additional territorial infrastructure arising from the establishment of Nunavut with PWGSC designated as Project Manager and Strategic Investment Adviser to DIAND. PWGSC was also designated as both Project Leader and Project Manager for any additional federal infrastructure required as a result of the establishment of Nunavut.

The GNWT has taken the position that responsibility for the management of additional Nunavut infrastructure construction should be transferred to the GNWT, for the period up to 1999. After 1999, the management responsibility would belong to the Nunavut Government. Among the major concerns is that construction contracts be awarded primarily to local, Nunavut and northern contractors with resulting benefits for the development of a local workforce and the northern economy.

There has been some discussion of the question of governmental responsibility for the management of additional infrastructure construction in the context of governmental obligations under Article 24 of the Nunavut Land Claims Settlement Agreement. It is the position of the GNWT that its Business Incentives Policy (BIP), as it may be amended from time to time, is the appropriate vehicle for meeting GNWT obligations pursuant to Article 24. Article 24.9.2 states:

> "The Territorial Government will carry out the terms of this Article through the application of Territorial Government preferential contracting policies, procedures and approaches intended to maximize local, regional and northern employment and business opportunities."

The NIC Report suggests that additional, federally funded infrastructure required for Nunavut be dealt with under different rules than those applying to infrastructure development undertaken as part of normal territorial needs. In this respect, NIC recommends that the existing northern business preference (under BIP) be removed, and that a Nunavut business preference be substituted for it.

If the intent of this recommendation is to ensure compliance with Article 24, it is not clear on what grounds a differentiation is to be made between infrastructure intended to support the Nunavut Government and other infrastructure. The strongest case may be made for the application of the same rules to all infrastructure, and these must be consistent with the GNWT's obligations pursuant to Article 24 of the Nunavut Land Claims Agreement.

The GNWT sees federal management of infrastructure as an unnecessary duplication of a function that the GNWT is equipped to discharge and as potentially disadvantageous to the future Nunavut government. This involves the reassertion of a federal presence in an area devolved to the GNWT 25 years ago. It is contrary to the federal government's expressed support for strengthening public government in the north. Indeed, the GNWT currently manages contracts on behalf of the federal government because it is cost effective to do so.

GNWT Position

- That GNWT assume the responsibility for the construction of additional infrastructure required for Nunavut to 1999.

- That on April 1, 1999, responsibility for the construction of additional Nunavut infrastructure be assumed by the Nunavut Government.

- That the BIP, as may be modified from time to time, apply to this infrastructure in the period leading to April 1, 1999.

NIC Recommendations

The GNWT substantially agrees with the following NIC recommendations:

- 7-4: The NIC recommends that, in relation to the broad, on-going process of government contracting, the Government of Canada and the GNWT each continue comprehensive discussions with NTI for the purpose of ensuring that day-to-day contracting policies, procedures and approaches for the construction and maintenance of government facilities meet fully the letter and spirit of Article 24 of the Nunavut Agreement.

NTI Recommendations

The GNWT substantially agrees with the following NTI recommendations:

- 4-1 That planning and construction of Nunavut infrastructure commence at the earliest possible date.

- 4-2 That the development of infrastructure for Nunavut proceed on the basis of assumptions set out in the NIC supplementary report, "Infrastructure Requirements of the Nunavut Government" regarding:
  - the size of the Government of Nunavut public sector and the distribution of Government of Nunavut jobs among Nunavut communities;
  - population assumptions;
  - a 20 year planning cycle, from 1996/97 to 2015/16;
  - the definition of reasonable incremental costs; and
  - the recommended implementation schedule for establishment of the Government of Nunavut after 1999.

- 4-3 That, as a general rule, new Nunavut Government facilities be constructed and maintained through leasehold arrangements with private sector suppliers.

- 4-5: That the tender, award, management and monitoring of construction and leasing of infrastructure for the Nunavut Government comply fully with the letter and spirit of Article 24 of the Nunavut Land Claims Agreement.

DIVISION OF ASSETS AND LIABILITIES

The division of the assets and liabilities of the present GNWT between Nunavut and the western NWT is an important and potentially sensitive area of concern. The GNWT is committed to ensuring that the division of its assets and liabilities occurs in a way that is open, fair and equitable.

Physical assets like land, roads, buildings, furniture and vehicles pose less difficult problems. All NWT Commissioner's lands that are located in Nunavut will be transferred to the Nunavut Government on April 1, 1999. Buildings and infrastructure on such lands will be transferred with them. Questions of asset ownership must be resolved in cases where a decision is taken to maintain joint institutions (e.g.: the Power Corporation or the Workers' Compensation Board). The division of assets and liabilities cannot be settled in isolation from this question. Program "phasing" options post-1999 may also complicate this exercise.

The division of assets and liabilities cannot be dissociated from the question of federal responsibility for meeting the incremental funding requirements of division. For example, the Nunavut Government will eventually require its own Legislative Assembly building and heritage centres and the absence of such facilities in Nunavut must be addressed through Nunavut-federal funding arrangements and cannot be resolved through the division of the existing assets of the GNWT.

Liquid assets and liabilities (including cash, accounts receivable, accounts payable and contingent liabilities) pose other problems. An accurate picture of the accounts of the GNWT, as of March 31, 1999, will not be known until some months after that date, and the completion of the division of the assets and liabilities of the GNWT will not be able to be completed until that time. More important than the division of liquid assets and liabilities will be from the determination of the post-1999 funding needs of each territory, and the fairness with which the gross expenditure base of each territory is determined.

The GNWT agrees with the NIC suggestion that common definitions, principles and a process for the fair and equitable distribution of assets and liabilities be agreed to prior to April 1,1999. The GNWT views the division of assets and liabilities as a largely technical exercise and supports having a comprehensive inter-governmental agreement in place before April 1, 1999. The actual value of the assets and liabilities as of March 31, 1999 will not be available until the financial statements are prepared and audited. Physical assets be inventoried, legally described and prepared for transfer prior to 1999. All lead up work, methodologies and principles for calculating the distribution of each type of asset and liability can be in place by 1999 so that a formal agreement can be signed when the two newly elected governments assume office. A paper outlining the GNWT's recommended methodologies on how to proceed with the division of assets and liabilities will be circulated to the parties for discussion later in 1996.

GNWT Position

- The distribution of assets and liabilities, to the extent possible, must be done in a manner which will ensure and maintain the financial and program stability of each new government.
- The federal government must provide for identified shortfalls in assets.

NIC Recommendations

The GNWT substantially agrees with the following NIC recommendations:

- 11-5: The NIC recommends that the division of assets and liabilities between the Nunavut Government and the GNWT be resolved through the conclusion of a comprehensive inter-governmental agreement, prior to April 1 1999, sorting out the ownership of all classes of assets and liabilities now owned or controlled by the GNWT at the date of the agreement and all liabilities, established or contingent, incumbent on the GNWT at the date of the agreement. Specific exceptions to the complete division of assets and liabilities might be made in relation to those assets and liabilities that are tied to institutions that continue, after April 1, 1999, to carry out functions on behalf of both the residents of Nunavut and the Mackenzie Valley (for example, a Workers' Compensation Board and an Electric Power Corporation).

- 11-6: The NIC recommends that the GNWT continue its work of assembling and maintaining an inventory of various classes of GNWT assets and liabilities. The GNWT, NTI, the Government of Canada and the NIC should continue to consult among themselves as to the practical measures that might be adopted in order to resolve the fair and equitable division of assets and liabilities, but the conclusion of a comprehensive inter-governmental agreement should only follow the appointment of an Interim Commissioner for Nunavut.

INCREMENTAL COSTS OF DIVISION

All professional studies to date have concluded that the process of establishing two territories from the present NWT will give rise to extraordinary costs over the transition period and that diseconomies of scale resulting from the establishment of two governments, in place of a single former government, will result in a net increase in the costs of governance in the North.

From the inception of the division process, there has been a serious concern on the part of the GNWT that the establishment of two governments be supported by sufficient additional financial resources from the federal government to ensure that programs and services provided to all residents of the NWT will not be jeopardized. When the GNWT, in association with the Tungavik Federation of Nunavut, negotiated the Nunavut Political Accord, it secured an undertaking that the federal government would "determine and fund reasonable incremental costs arising from the creation and operation of the Government of Nunavut." This undertaking means, in plain language, that there will be incremental costs arising from the division of the territories and that the federal government, once it has determined those costs, will provide additional resources to cover them. It may be added that, although the federal commitment may be expressed in qualified terms, the qualifications cannot overshadow the substance of the commitment. The criterion for providing funding to cover incremental costs is that of reasonableness.

The federal commitment to meet reasonable incremental costs cannot be dissociated from the total fiscal picture of the Northwest Territories. At the time of negotiating the Nunavut Political Accord, it was assumed that the territorial funding levels would remain sufficient to allow the continuation of programs and services of comparable scope to those already in existence, and that incremental funding would address the diseconomies of scale and other costs resulting from the establishment of two governments, including associated capital needs. This is reflected in Part 8.5 of the Political Accord, which states that:

> "The financial arrangements referred to in 8.1 and 8.2 shall support the need for financial stability for the territories and provide both territorial governments the opportunity to continue to provide public services for residents, recognizing the existing scope and quality of such services."

The First Report of Special Joint Committee on Division of the 12th Legislative Assembly expressed the concern that the federal commitment to meet incremental costs, given in the Nunavut Political Accord, could be devalued by adjustments to the formula or by funding erosion in other areas. Following the last federal budget, this concern has magnified. Fiscal projections indicate a growing gap between expenditure and revenue projections. The GNWT has had to take firm measures to close this gap over the next two years. Otherwise there is a real risk that two cash-strapped territorial governments could be established in 1999 and the problems of determining the division of territorial assets and liabilities would greatly magnify. However, territorial fiscal restraint can only deal with gaps between normal territorial revenues and expenditures. Additional federal funding is required to meet the federal commitment in Parts 8.3 and 8.5 of the Nunavut Political Accord.

Some dimensions of this problem are long-term while others are immediate. For division to proceed in an orderly manner, some significant financial expenditures must be made in the period prior to 1999, and in some cases in the coming fiscal year.

These incremental expenditures are costs that government would not incur except for division. Examples include:

- human resource development and training costs;
- additional infrastructure costs;
- costs of revision of the statutes of the NWT for separate Nunavut and western territories;
- costs of the Office of the Interim Commissioner;
- costs of an electoral boundaries commission for Nunavut and the western territory;
- costs arising from the reorganization of territorial government departments preparation for division.

In most cases, the GNWT is the best equipped or only agency able to carry out these responsibilities. However, territorial budgets do not allow such significant costs to be met from internal sources. Fiscal projections indicate that, given federal funding cut-backs, the GNWT will not be able to maintain existing programs and services in the period up to 1999, let alone absorb additional costs arising from division. It is therefore critical that the federal and territorial governments reach agreement on the definition and criteria for meeting transition costs.

Some reassurance has been provided in this area by DIAND Minister Irwin's announcement of April 30, 1996 of incremental funding for division Nevertheless GNWT has concerns as to the sufficiency of this funding. In addition, a process is needed to determine how incremental funds will be provided to the GNWT.

GNWT Position

- That discussions continue between the GNWT and DIAND on requirements for transitional incremental costs of division.

- That, by December 1996, Canada and GNWT sign a Memorandum of Understanding to cover GNWT transitional incremental costs of division for the period ending on March 31, 1999.

POST-DIVISION FUNDING ARRANGEMENTS

Formula funding for the territorial governments was introduced in 1985, to replace the object-by-object budget negotiation process that prevailed up to that time. Under formula financing, a block grant is provided by the federal government, which the territorial government is then free to spend as appropriate. Five principles guided the original formula and still remain valid. They are:

- **adequacy** of the grant to allow the provision of services comparable to those provided in other jurisdictions
- **responsibility and accountability** of territorial governments to their constituents for budgetary decisions
- **certainty**, to allow short and long term fiscal planning
- **stability** in face of annual fluctuations in territorial revenues
- **neutrality**, in the sense that the agreements, once in effect, should not be subject to discretionary actions by either government.

Formula financing has been an important component of territorial political evolution and in this regard the Nunavut Political Accord contains a federal commitment to continue formula-based financial arrangements for the western territory after division. For Nunavut, it is unclear that arrangements based upon the current formula would be workable. The Political Accord therefore acknowledges the "desirability" of formula based arrangements for Nunavut, while recognizing that "financial arrangements may be analogous to those which currently exist...with such modifications as may be necessary." Whether a formula funding agreement, comparable to that currently in place for the NWT, would be workable for Nunavut post-1999 hinges primarily on the differences in revenue and expenditure patterns between Nunavut and the western territory and possibly of major expenditure fluctuations during the transition process following 1999.

The Nunavut Political Accord provides that financing arrangements for both Nunavut and the western territory are to be put in place prior to April 1, 1999. Discussions with the federal government as to the appropriate arrangements for both Nunavut and the western territory would be conducted by the present GNWT with the involvement of the Interim Commissioner. The GNWT's role stems from its continuing responsibility to represent the interests of its constituents vis-a-vis other governments in Canada, and from the GNWT's information and experience in this highly technical area.

In addition, NTI, as a party to the Nunavut Political Accord, has the right to be advised of, and consulted in, the course of these funding discussions. Proper planning by the Nunavut and western governments requires that financial arrangements and the budgets of the two governments be sorted out well in advance of April 1, 1999. Discussions on these matters should therefore commence at an early date.

GNWT Position

- That formula funding arrangements be established for the governments of Nunavut and the western territory and that such arrangements or ancillary agreements provide fully for the incremental costs associated with the establishment and operation of two territorial governments.

- That discussions of the financial requirements of the two territories commence by September 1996 and be concluded no later than March 31, 1997.

NTI Recommendations

The GNWT substantially agrees with the following NTI recommendations:

- 5-1: That financial arrangements for the Government of Nunavut and the consultation processes that precede the establishment of financial arrangements, including the determination of reasonable incremental costs for Nunavut, be consistent with the Nunavut Political Accord.

CONSTITUTIONAL ISSUES

An important area to which the NIC report gives some attention concerns the need for amendments to the constitution of Canada as a result of the creation of two territories. Currently, various constitutional documents make reference to the "Northwest Territories" and these references should be replaced by references to Nunavut and the western territory.

Three constitutional documents are of relevance. The first of these is the "Charter of Rights and Freedoms", the amendment of which would remove any uncertainty as to whether or not all the provisions of the Charter have full force and effect in Nunavut as elsewhere in Canada. An amendment to the Charter, even of a "housekeeping" nature such as this, would require enactment in conformity with the general amending formula (requiring the consent of Parliament as well as of seven provinces having not less than 50% of the population of the provinces).

In addition there is a need to amend s.51(2) of the Constitution Act, 1867. This provides for the NWT to be represented in the House of Commons by two MPs. Recognition of the right of separate representation of Nunavut and the western NWT is required. This would be an amendment of a "housekeeping" nature and appears to be within the authority of the Parliament of Canada.

The Constitution Act (No.2), 1975 provides for a single Senator from the NWT. Separate representation for both Nunavut and the western territory. One option would be to amend the Act directly to provide for separate Nunavut and western seats. Alternately Parliament could pass a new Constitution Act to establish a separate Senate seat for Nunavut without amending the 1975 Act. Failure to deal with this issue, one way or the other, would create a constitutional anomaly whereby one territorial jurisdiction would not be represented along with all other jurisdictions in a central institution of the Canadian federal system.

The GNWT agrees with NIC and NTI on the need for constitutional amendments but emphasizes that different constitutional amending approaches may apply. For this reason the GNWT does not seek to link these processes.

GNWT Position

- That the Canadian Charter of Rights and Freedoms be amended to refer explicitly to Nunavut and the western territory.
- That the Constitution Act (No. 2), 1975 be amended or that Parliament otherwise act to provide for separate representation in the Senate of Canada for Nunavut and the western territory.
- That s.51(2) of the Constitution Act, 1867 be amended in recognition of the right of Nunavut and the western territory to separate representation in the House of Commons.

NIC Recommendations

The GNWT substantially agrees with the following NIC recommendations from Footprints in New Snow:

4-1	5-2	5-8	5-18	6-8	7-4
4-3	5-3	5-11	5-19	6-9	8-1
4-5	5-5	5-12	6-1	6-11	8-3
4-6	5-6	5-13	6-6	6-13	8-4
4-8(1)	5-7	5-15	6-7	6-14	10-2

10-3	11-6
10-9	12-1
10-10	12-6(1)
10-11	12-10
11-2	12-12
11-5	

NTI Recommendations

The GNWT substantially agrees with the following NTI recommendations from the NTI response to Footprints in New Snow:

1-2	2-7	3-6(2)	5-1	6-5
1-3	2-10	3-8	5-2	7-4
1-4	3-2	4-1	6-1	
1-5	3-3	4-2	6-2	
2-4	3-5	4-3	6-3	
2-6	3-6(1)	4-5	6-4	

APPENDIX "B"

Excerpt from: "Looking to the Future" published by the Chief Electoral Officer of Canada

Countdown to Division: Calendar of Activities and Decisions

1996	July	- Define boundaries commission for Nunavut and NWT. - Arrange technical/administrative support.
	August	- Appoint boundaries commissions for Nunavut and new - western territory.
	September	- Boundaries commission process begins.
	October	- Legislature debates amendments to NWT *Elections Act*.
	December	- Decision on nature of infrastructure for future electoral administration. - Decision on Nunavut electoral law. - Financing in place.
1997	April	- Elections Nunavut office operational. - Tariff of Fees under development. - Amendments to NWT *Elections Act* approved. - Commence development of administrative systems, information materials and election materials.
1998	March	- New electoral boundaries confirmed by Governor in Council for Nunavut and by Legislative Assembly for western territory; waiting period begins.
	December	- All returning officers appointed for new electoral districts.
1999	January	- Train returning officers appointed for new electoral districts.
	February	- Hire and train enumerators. - Carry out enumeration in both territories.
	March	- Prepare lists of electors in both territories.
	April	- Issue writs of election in both territories.
	May 17	- Earliest polling day for new territories.
	June 16	- Earliest date to convene first Legislative Assembly of Nunavut.